ORIGINAL

FILED IN THE
UNITED STATES DISTRICT COURT
DISTRICT OF HAWAII
DEC 23 2005
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SUE BEITIA, CLERK

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HAWAII LABORERS' TRUST FUNDS

LODGED
DEC 22 2005
CLERK, U. S. DISTRICT COURT
DISTRICT OF HAWAII

IN THE UNITED STATES DISTRICT COURT

FOR THE DISTRICT OF HAWAII

HAWAII LABORERS' TRUST FUNDS, (*Hawaii Laborers' Health & Welfare Trust Funds* by its trustees Harry Ushijima, Albert Hamamoto, Mel Cremer, Benjamin Saguibo, Daniel Nakamura, Stephanie C. Mahelona, Walter Arakaki, Antonio J. Saguibo, Jr., Anacleto Alcantra, and Larry Cadiz, etc., et al.,)	CIVIL NO. 05-00072 SPK KSC
Plaintiffs,	FINDINGS OF FACT AND RECOMMENDATION FOR DISPOSITION RE: PLAINTIFF'S MOTION FOR ENTRY OF DEFAULT JUDGMENT AGAINST DEFENDANT L & F MASONS LLC
vs.	
L & F MASONS LLC, a Hawaii corporation,	DATE: September 8, 2005 TIME: 9:30 a.m. JUDGE: Kevin S.C. Chang
Defendant.	

FINDINGS OF FACT AND RECOMMENDATION FOR DISPOSITION RE: PLAINTIFF'S MOTION FOR ENTRY OF DEFAULT JUDGMENT AGAINST DEFENDANT L & F MASONS LLC

Plaintiffs HAWAII LABORERS' TRUST FUNDS' ("Plaintiffs") Motion for Entry of Default Against Defendant L & F MASONS LLC, ("Defendant"), having come for hearing before the Honorable Kevin S.C. Chang, Magistrate Judge on September 8, 2005, 2005 at 9:30a.m. and Pablo P. Quiban, Esq. appearing on behalf of Plaintiffs, no one appearing on behalf of Defendant; and the Court having read the memoranda, declarations, affidavits and exhibits in support and in opposition thereto, having considered the evidence presented, and having heard oral arguments, and being fully advised in the premises and good cause appearing therefor, it is RECOMMENDED that Plaintiffs' Motion for Entry of Default Judgment Against Defendant L & F MASONS LLC, be GRANTED.

The court bases its recommendation upon the following findings:

FINDINGS OF FACT

1. Defendant L & F MASONS LLC, is doing business in the State of Hawaii under Hawaii Contractor License No. C-17472 with its principal place of business in the County and County of Honolulu, State of Hawaii.

2. Defendant entered into a collective bargaining agreement with the Laborers' International Union of North America, Local 368, AFL-CIO ("Union") on

May 19, 1993, which was acknowledged by the Certification of Receipt and Acceptance, copies of both documents were attached to the Complaint filed herein, which agreements by their terms incorporated the Master Agreement Covering Construction Laborers in the State of Hawaii ("CBA").

3. That under the CBA, Defendant promised to contribute and pay employee benefit contributions once per month to Plaintiff for each hour of work performed by Defendant's employees for work covered by the CBA, which contributions are to be paid to Plaintiff on or before the 20th day of each month for hours worked the prior month.

4. That under the CBA, Defendant agreed that in the event monthly trust fund contributions were not paid when due, Defendant would pay the sum of $20.00 or 20%, whichever was greater, of the amount of the trust contributions owed to each Trust Fund for each delinquency, as and for liquidated damages and not as penalty.

5. That under the CBA, Defendant agreed to submit its monthly payroll reports and to provide Plaintiffs with all the information necessary to carry out the purposes of the various trust funds, and to pay interest at the rate of 12% per annum on unpaid balances owed.

6. For the period from July 2004 to October 2004, Defendant under-reported hours worked by employees who were covered by the CBA which resulted in unpaid contributions and liquidated damages of FIFTY-SIX THOUSAND NINE HUNDRED THIRTY-ONE and 27/100 DOLLARS ($56,931.27), which delinquency was determined by monthly payroll report transmittals submitted by Defendant to the trust fund administrator's office, as noted in the *Affidavit of Ryan J.Q. Lee*, which affidavit was filed herein on March 31, 2005.

7. That the interest on the total amount owed is FIVE THOUSAND NINETY ONE and 06/100 DOLLARS ($5,091.06), (July 2004 to March 29, 2005).

8. On February 16, 2005, Defendant was served with a copy of the Complaint; Summons in this case as noted in the Return of Service filed herein on February 22, 2005.

9. That due to Defendant's failure to file and Answer or respond to the Complaint, a *Request For Entry of Default* was filed herein on March 11, 2005.

10. Plaintiff then filed its *Motion For Entry of Default Judgment* Against Defendant, on March 31, 2005, which was heard on September 8, 2005.

11. That at this time, the total amount owing by Defendant is FORTY-ONE THOUSAND FIVE HUNDRED FORTY-EIGHT and 02/100

DOLLARS ($41,548.02) for contributions, FIFTEEN THOUSAND THREE HUNDRED EIGHTY-THREE and 25/100 DOLLARS ($15,383.25) for liquidated damages, FIVE THOUSAND NINETY-ONE and 06/100 DOLLARS ($5,091.06) in interest for a total of and SIXTY-TWO THOUSAND TWENTY-TWO AND 33/100 DOLLARS ($62,022.33).

12. That Plaintiffs are entitled to reasonable attorney's fees and costs pursuant to Section 14, II, 4(a)(5), p. 20 of the CBA and pursuant to the Employees Retirement Income Security Act, 29, U.S.C. Section 1132(g)(2), and as supported by the Declaration of Counsel and Bill of Costs submitted at a later date.

RECOMMENDATION

Pursuant to the foregoing findings of fact, it is RECOMMENDED that:

A. Plaintiffs' Motion for Entry of Default Judgment be GRANTED and that judgment be entered against Defendant L & F MASONS for the sum of and SIXTY-TWO THOUSAND AND TWENTY-TWO AND 33/100 DOLLARS ($62,022.33) plus legal interest from the entry hereof until paid in full.

B. Plaintiffs be awarded in the amount of $2,254.41 for attorney's fees and costs.

IT IS SO FOUND AND RECOMMENDED.

DATED: Honolulu, Hawaii, DEC 22 2006.

Judge of the Above-Entitled Court

CIVIL 05-00072SPK-KSC

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